REMARKS

Claims 1-8, 10-25, and 27-34 are pending in the application. Claims 9 and 26 were cancelled by amendment dated November 7, 2007. Claims 1-34 stand rejected as indefinite under 35 U.S.C. 112, ¶ 2 for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-5, 8-11, 15-22, 25-28, and 32-34 stand rejected as obvious under 35 U.S.C. 103(a) in view of U.S. Patent No. 5,381,349 to Winter et al. ("Winter") and U.S. Patent No. 7,076,119 to Takemoto ("Takemoto"). Claims 6 and 23 stand rejected as obvious in view of Winter, Takemoto, and U.S. Publication No. 2004/0267854. Claims 7 and 24 stand rejected as obvious in view of Winter, Takemoto, U.S. Publication No. 2004/0267854, and U.S. Patent No. 6,157,735. Claims 12 and 29 stand rejected as obvious in view of Winter, Takemoto and U.S. Patent No. 6,076,964. And claims 14 and 31 stand rejected as obvious in view of Winter, Takemoto, and U.S. Patent No. 5,398,076. The Applicant traverses each of these rejections in view of the following remarks.

Rejection of Claims under 35 U.S.C. § 112

Claims 1-34 stand rejected as indefinite under 35 U.S.C. 112, ¶ 2. The Examiner argues the phrase "a plurality of differences between a second power law function and the transfer function" is indefinite because the difference between two functions is another function. *Office Action* at ¶ 2. The applicant does not disagree that the difference between two functions is another function. However, the applicant notes that such a function *is itself* a plurality of differences between the two functions. Thus, a modelling error "obtained from a plurality of differences between the second power law function and the transfer function" is a modelling error obtained from two or more values of the difference function, or as applicant claims, from two or more "differences between the second power law function and the transfer function." The rejection should be withdrawn for this reason.

Rejection of Claims under 35 U.S.C. § 103(a)

Claims 1-5, 8-11, 15-22, 25-28, and 32-34 stand rejected under 35 U.S.C. 103(a) as obvious in view of the combination of Winter and Takemoto. Of these, claims 1, 17, 18 and 34 are independent. The applicant respectfully traverses these rejections for the reasons noted below.

The applicant previously argued that each of claims 1 and 18 recites "generating an auxiliary function from the transfer function and local differences between the transfer function and the first power law function; [and] fitting a second power law function to the auxiliary function," and that neither Winter nor Takemoto discloses these limitations. The Examiner responded by cautioning the applicant that "one cannot show non-obviousness by attacking references individually where the rejections are based on a combination of references." *Office Action* at ¶ 12.

The Examiner misunderstands the applicant's argument. The applicant is not attacking either Winter or Takemoto in isolation. Instead, the applicant is attacking the Winter and Takemoto references taken together, since neither reference discloses either generating an auxiliary function in the manner claimed or fitting a second power law function to such an auxiliary function. To render claims 1 and 18 obvious, the combination of Winter and Takemoto must disclose each and every limitation of the claims. Clearly, if neither reference discloses one of the limitations, the combination taken together cannot disclose that limitation. The applicant's argument is therefore that neither Winter nor Takemoto discloses the limitations of "generating an auxiliary function from the transfer function and local differences between the transfer function and the first power law function" or "fitting a second power law function to the auxiliary function."

In fact, the Examiner readily admits that Winter fails to disclose either of these limitations. *Office Action* at ¶ 3. Consequently, the Examiner necessarily argues that Takemoto discloses both of them. Regrettably, the Examiner fails to substantively explain Takemoto's disclosure, or how it renders claims 1 and 18 obvious when combined with Winter. Instead, the Examiner does little more than parrot back the applicant's claim language, and conclusorily states that Takemoto discloses "determining difference between curves (col. 8 lines 19-20) and using 'curve fitting' method (col. 8 lines 15-16) wherein an auxiliary function is generated from the transfer function and local differences between the transfer function and the first power law function (column 3, lines 21-51), fitting a second power law function to the auxiliary function (column 3, lines 67-column 4, line 7 and column 4, lines 42-46), and calculating a modelling error from the second power law function and the transfer function (column 4, lines 53-62) wherein the modelling error is obtained from a plurality of differences between the second power

law function and the transfer function (column 4, lines 53-62)." *Id.* The applicant notes that the Examiner "cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which [she] relies." *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). For this reason alone, the Examiner has failed to prove a *prima facie* case of obviousness, and the claims should be allowed.

As argued in the applicant's previous response, neither the Winter reference nor the Takemoto reference discloses "generating an auxiliary function from the transfer function and local differences between the transfer function and the first power law function" or "fitting a second power law function to the auxiliary function." What Takemoto does disclose is correcting a curve consisting of separate regions A, B and C (as shown in FIG. 3A), by fitting each of those regions with one of three corresponding quadratic functions a, b and c (as shown in FIG. 3B), and then using those quadratic functions and differences between those quadratic functions and the line $y = x$ to "correct" the original FIG. 3A curve. *Takemoto* at 8:5-22. Thus, the Examiner is correct that Takemoto generally discloses curve fitting and determining the difference between curves, both of which have been known for years. But applicant is <u>NOT</u> claiming curve fitting or finding difference curves in general. Instead, applicant is claiming a method for modelling a transfer function with a power law function. The method involves, in part, "generating an auxiliary function from the transfer function and local differences between the transfer function and the first power law function; [and] fitting a second power law function to the auxiliary function." Takemoto fails to disclose either of these limitations, and the Examiner has twice admitted that Winter fails to disclose these limitations. If neither Winter nor Takemoto disclose these limitations, surely the combination fails to disclose them as well.

In applicant's previous response, the applicant noted the vagueness and ambiguousness of Takemoto's disclosure. In the current office action, the Examiner tries to better explain the reference by alleging that Takemoto discloses "the auxiliary function is derived from the difference between the first power law and the transfer function through the use of the brightness calibration and the use of the comparison color patch (column 3, lines 21-51). A gamma value is determined from the comparison color patch, thus disclosing fitting a second power law to the auxiliary function in order to generate another gamma value (column 3, lines 67-column 4, line 7 and column 4, lines 42-46). Then a modelling error is obtained from the second power law

function and the transfer function as the differences between the two gamma values as function difference (column 4, lines 53-62)." *Office Action* at ¶ 13. First, the applicant fails to see how manually changing *a single gamma value* so that a test color matches the color of a color patch discloses *fitting a second power law function to an auxiliary function* as the Examiner contends. Second, the Takemoto reference does not discuss color patches at all, or using color patches to determine gamma values. That is the disclosure of Winters! And, the Examiner has twice admitted that Winter's disclosure of using color patches to manually determine single gamma values fails to disclose the applicant's claimed method of generating auxiliary functions, fitting auxiliary functions with second power law functions or calculating modelling errors between the fitted second power law functions and the transfer function. In fact, it is precisely *because* Winter's fails to disclose these limitations that the Examiner has to rely on Takemoto. But, as discussed above, Takemoto fails to disclose these limitations as well. The Examiner cannot rely on Winter's disclosure, which she has twice admitted is lacking, to fill in Takemoto's missing disclosure. Instead, she must admit, as the applicant has argued, that the combination of Winters and Takemoto as a whole lacks sufficient disclosure to render the claimed invention obvious. The claims should be allowed to issue for this reason as well.

Claims 17 and 34, are similar to claims 1 and 18, but recite "reflecting the first power law function about the transfer function to generate an auxiliary function" rather than "generating an auxiliary function from the transfer function and local differences between the transfer function and the first power law function" as recited in claims 1 and 18. The Examiner's analysis of claims 17 and 34 is nearly identical to her analysis of claims 1 and 18. First, she alleges that Winter fails to disclose "reflecting the first power law function about the transfer function to generate an auxiliary function." *Office Action* at ¶ 3. Then, she repeats her previous conclusory statement that Takemoto discloses "determining difference between curves (col. 8 lines 19-20) and using 'curve fitting' method (col. 8 lines 15-16) wherein *an auxiliary function is generated from the transfer function and local differences between the transfer function and the first power law function* (column 3, lines 21-51), fitting a second power law function to the auxiliary function (column 3, lines 67-column 4, line 7 and column 4, lines 42-46), and calculating a modelling error from the second power law function and the transfer function (column 4, lines 53-62) wherein the modelling error is obtained from a plurality of differences between the

second power law function and the transfer function (column 4, lines 53-62)." *Id.* (emphasis added). Significantly, the Examiner fails to even allege that Takemoto discloses "reflecting the first power law function about the transfer function to generate an auxiliary function," which is the limitation that most distinguishes claims 17 and 34 from claims 1 and 18. Assuming *arguendo* that Takemoto in fact disclose the claim 1 and 18 limitation of generating an auxiliary function from a transfer function and local differences between the transfer function and the first power law function – **and it does not** – the Examiner has provided no evidence or argument that Takemoto discloses generating the auxiliary function by "reflecting the first power law function about the transfer function" as recited in claims 17 and 34. Consequently, the Examiner has failed to provide a *prima facie* case that claims 17 and 34 are obvious in view of the combination of Winter and Takemoto, and these claims should be allowed for at least this reason.

Claims 2-5, 8, 10-11 and 15-16 depend from claim 1. Claims 19-20, 25, 27-28 and 32-33 depend from claim 18. The Examiner rejects each of these claims as obvious in view of Winter and Takemoto for the same reasons she rejected claims 1 and 18. However, since claims 1 and 18 are not obvious in view of the combination of Winter and Takemoto for the reasons noted above, claims 2-5, 8, 10-11, 15-16, 19-20, 25, 27-28 and 32-33 are not obvious in view of that combination of references for the same reasons.

The Examiner rejected dependent claims 6, 7, 12-14, 21-24, and 29-31 as obvious under some combination of Winter, Takemoto, and at least one other reference. However, in each case, the Examiner relied solely on the Winter and Takemoto references to disclose the limitations recited in the independent claims 1 and 18 on which these claims depend. Consequently, since the combination of Winter and Takemoto do not render claims 1 and 18 obvious for the reasons noted above, the combinations relied upon by the Examiner also fail to render obvious claims 6, 7, 12-14, 21-24 and 29-31 for the same reasons.
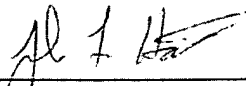
All claims are believed to be in condition for allowance, which action is herby requested. No fees are believed due, however, please apply any applicable charges to deposit account 06-1050.

Respectfully submitted,

Date: 3/25/08

John F. Horvath
Reg. No. 47,663

Customer No. 21876

11036314 (2).doc